



132

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-24036-2025

Date of decision: 05.05.2025

Prakash Sharma

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ravish Kumar, Advocate and
Mr. Punit Jain, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of complaint case bearing No.NACT/130/2025 titled as '*Shiv Kumar Vs. Prakash Sharma*' under Section 138 of the Negotiable Instruments Act pending before the learned trial Court (Annexure P-16) and summoning order dated 12.03.2025 (Annexure P-19).

2. Learned counsel for the petitioner *inter alia* contends that the dispute between the petitioner and respondent No.2 pertains to purchase of property. Respondent No.2, namely, Shiv Kumar, approached the petitioner and has shown his interest in buying the property owned by the petitioner and one agreement to sell was executed (Annexure P-2). On the target date, the concerned Registrar refused to register the sale deed on the ground that there is an interim injunction passed by the Debt Recovery Tribunal (DRT) at Delhi. Prior to the execution of agreement to sell with respondent No.2, petitioner has received token money of Rs.1 lakh from one Jitender towards part payment sale

**CRM-M-24036-2025****-2-**

consideration for entering into an agreement to sell and the aforementioned Jitender backed out from the deal and respondent No.2 paid the token money of Rs.1 lakh to Jitender and provided the receipt of token money with an endorsement of Jitender to petitioner. Due to inability on the part of respondent No.2 to pay the entire sale consideration, the petitioner and respondent No.2 mutually agreed to cancel the agreement to sale by executing a deed of cancellation. The petitioner has agreed to pay the amount of Rs.9 lakh to respondent No.2 on the condition that he will provide the proof of payment made by respondent No.2. To the utter shock and dismay of the petitioner, respondent No.2 produced a receipt of token money with an endorsement of Jitender. As such, it is clearly established that respondent No.2 has forged the receipt and the necessary ingredient to invoke Section 138 of the Negotiable Instruments Act is clearly missing. There was no liability on the part of the petitioner and even the witness to the receipt, namely, Jet Ram, denied any transaction between respondent No.2 and Jitender. Further, the petitioner has requested respondent No.2 not to present the cheque in question till the original receipt of payment is not provided by him. As such, the petitioner filed a representation before the Deputy Commissioner, Palwal and Deputy S.P., Palwal for taking appropriate action against respondent No.2.

3. Having heard learned counsel for the petitioner, this Court finds no force in the arguments advance by him. All the arguments raised by the petitioner are the matter of trial. The probable defence, however, convincing it may seem, can only be appreciated by the learned trial Court on the basis of the evidence led by the parties at this stage.



4. As such, the matter requires to be adjudicated by the learned trial Court on the basis of the evidence adduced by the parties and the probable defence as set up by the petitioner cannot be gone into at this stage. A two Judge bench of the Hon'ble Supreme Court in ***HMT Watches Limited vs. M.A. Abida (2015) 11 SCC 776*** has held that inherent powers under Section 482 of the Cr.P.C. cannot be extended to determining question of facts. It is only for the trial Court to determine the disputed questions of fact after examining the evidence on record and interference by this Court with regards to factual questions is impermissible in law.

5. A two Judge bench of the Hon'ble Supreme Court in the ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT) 2022 SCC Online SC 513***, speaking through Justice Hrishikesh Roy, observed as under:

“17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

6. Reliance in this regard can also be placed on the judgement rendered by the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458***.

7. Accordingly, the present petition is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

**CRM-M-24036-2025****-4-**

8. However, nothing observed herein shall be construed as expression of an opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

(HARPREET SINGH BRAR)
JUDGE

05.05.2025*Neha*

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No